

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

HORNER MILLWORK CORP.

v.

CA 08-321 ML

UNITED STATES FIRE INSURANCE
COMPANY

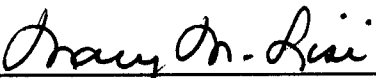
MEMORANDUM AND ORDER

This matter is before the Court on Defendant's objection to a Report and Recommendation issued by Magistrate Judge Almond on May 26, 2009. Defendant argues that because the Rhode Island Superior Court granted a motion for summary judgment filed by Kolbe & Kolbe Millwork, Plaintiff's "sole basis for [its] claim to defense and indemnity" is eliminated. This Court makes several observations. First, although the Superior Court decision was rendered while the Magistrate Judge had this matter under advisement, Defendant did not notify the Magistrate Judge of the decision on the motion for summary judgment filed by Kolbe & Kolbe Millwork. Second, it appears that although the Superior Court granted the motion for summary judgment, it declined to enter a judgment pursuant to Sup. Ct. Civ. R. Pro. 54(b). Until such time as the court enters such a judgment and it becomes final, it is premature for this Court to rule upon Defendant's claim that it has no duty to indemnify Plaintiff.

As to the Magistrate Judge's recommendation with respect to Defendant's claim that it has no duty to defend, this Court is in complete agreement with the Magistrate Judge's findings, analysis, and conclusion.

Accordingly, Plaintiff's Motion for Summary Judgment is GRANTED as to Defendant's duty to defend and DENIED as to Defendant's duty to indemnify.

SO ORDERED:



Mary M. Lisi
Chief United States District Judge
July 10, 2009